IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP. No. 23531 of 1998(B)

PETITIONER:

SREE NARAYANA BHAKTHA PARIPALANA YOGAM,
SREE MAHESWARA TEMPLE, SREE NARAYANAPURAM,
KOORKANCHERRY, THRISSUR, REP. BY ITS PRESIDENT.

BY ADV. SRI.P.PUSHPARAJAN
SMT.S.GEETHA

RESPONDENTS:
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1. THE STATE OF KERALA, REP. BY ITS CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.

2. THE PRINCIPAL SECRETARY TO GOVERNMENT TAXES (H) DEPARTMENT, THIRUVANANTHAPURAM.

3. TAHSILDAR (REVENUE RECOVERY), TALUK OFFICE, THRISSUR.

BY SR. GOVERNMENT PLEADER SHRI MUHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP NO.23531/1998

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 - TRUE COPY OF BALANCE SHEET OF SREE MAHESWARA SHEKTRA DEVELOPMENT COMMITTEE - FROM 1.4.1994 TO 31.3.1995 (INCOME & EXPENDITURE ACCOUNT)

EXT.P1 a - TRANSLATION OF EXT.P1

EXT.P2 - TRUE COPY OF REPRESENTATION OF PETITIONER BEFORE 2ND RESPONDENT - PRINCIPAL SECRETARY DATED 16.4.1998

EXT.P3 TRUE COPY OF REPLY OF 2ND RESPONDENT TO THE PETITIONER NO.3306/H3/98/TD DATED 12.5.1998

EXT.P4 - TRUE COPY OF DEMAND NOTICE NO.H5-58/97 DATED 16.10.1998 ISSUED BY 3RD RESPONDENT TO THE PETITIONER

EXT.4a - TRANSLATION OF EXT.P4

EXT.P5 - TRUE COPY OF ASSESSMENT ORDER NO.H5-58/97 DATED 7.10.1997 ISSUED BY 3RD RESPONDENT TO PETITIONER

EXT.P6 - TRUE COPY OF AUDIT REPORT OF SREE NARAYANA BHAKTHA PARIPALANA YOGAM, SREE NARAYANAPURAM, KOORKKANCHERRY
1.4.1984 TO 31.3.1985 DATED 2.5.1985

EXT.P6a - TRANSLATION OF EXT.P6

//TRUE COPY//

H.L. DATTU, C.J. & K.T. SANKARAN, J.

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O.P. No. 23531 OF 1998

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Dated this the 9th August, 2007

J U D G M E N T

H.L. Dattu, C.J.:

Petitioner claims that it is a society registered under the provisions of the Act 11 of 1088 of the Registrar of Joint Stock Companies, as a charitable organisation. In this Original Petition filed under Article 226 of the Constitution of India, the petitioner-society seek the following reliefs, they are as under:

> *"i) Issue a writ of certiorari or any other writ, order or direction quashing Ext.P4 notice issued by the 3rd respondent and Ext.P5 assessment.*
>
> *ii) Issue a writ of mandamus or any other writ, direction or order directing the respondents to exempt the buildings -Shopping Complex and Sree Narayana Auditorium from the payment of building tax as exempted under the Building Tax Act and the Rules.*
>
> *iii) Stay all further proceedings pursuant to Ext.P4 notice dated 16.10.1998. "*

2. At the time of hearing of this Original Petition, learned counsel for the petitioner-society very fairly submits that he is not pressing for an answer

to prayer No.(ii).

3. Taking note of the submission made by the learned counsel, we are not answering prayer No.2 in this Original Petition.

4. What remains now is only the challenge against the orders of assessment passed by the Tahsildar (Ext.P5) under the provisions of the Kerala Building Tax Act and the notice issued pursuant thereto.

5. If, for any reason, the petitioner-society is aggrieved by the orders of assessment passed by the Tahsildar under the provisions of the Kerala Building Tax Act and notice of demand issued pursuant thereto, necessarily petitioner-society has to question those orders of assessment and notice of demand, by filing an appropriate appeal before the Revenue Divisional Officer. The remedy provided under the Act is not only effective but also efficacious. Without exhausting the remedy available to the petitioner-society under the Act, petitioner could not have approached this court.

6. In view of the above, the following:

O R D E R

i) In view of the submission made by the learned counsel for the petitioner-society, prayer No.2 raised in this Original Petition is rejected.

ii) If for any reason, the petitioner-society is aggrieved by the orders of assessment passed by the 3rd respondent-Tahsildar and the notice of demand issued pursuant thereto , petitioner- Society is permitted to file an appropriate appeal within 30 days from today.

iii) If such an appeal is filed within the time granted by this court,

the appellate authority shall decide the appeal only on merits without reference to the period of limitation.

iv) All other contentions raised in this Original Petition are left open.

v) Pending Civil Miscellaneous Petitions are also disposed of.

Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

K.T. SANKARAN,
JUDGE.

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H.L. DATTU, C.J.&
K.T. SANKARAN, J.

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O.P. No. 23531 OF 1998

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Dated this the 9th August, 2007

J U D G M E N T